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*Research Guides*

# FEDERAL TAX

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## I. INTRODUCTION TO RESEARCH SOURCES

Tax is a complex and technical area of law that changes frequently through amendments to the Internal Revenue Code. In addition, there are a number of regulatory and administrative documents generated by the Internal Revenue Service. Researchers must be aware of the types of sources, how they can be located and updated, and their level of authority.

Because of this complexity and constant change, tax researchers use specialized tools which provide more detailed information and make research more efficient. Tax even has special *Bluebook* citation rules for administrative materials because of its specialized terminology and publication forms (see Table 1.2, Department of the Treasury). This research guide introduces specialized materials for tax research and recommends research sources.

## Finding Materials in the Goodson Law Library

Most of the Goodson Law Library's current print resources on tax can be found on Level 2 as part of the Thigpen Tax Collection; some earlier editions are housed close to the current editions on level 2, with other historical materials in the “**Superseded Tax**” collection on Level 1 or in off-site storage. The location of all materials is displayed in the catalog.

### Tax Databases

The library increasingly relies on electronic resources for tax research, due to comprehensive coverage and speed of updates. Tax researchers at Duke University are fortunate to have several campus-wide research databases that include tax information (such as Thomson Reuters Checkpoint and Nexis Uni); the Duke Law community has additional access to well-developed tax resources on the Law School legal research services Bloomberg Law, Lexis Advance, and Westlaw. Throughout this guide, reference to “**major tax databases**” refers to this group of electronic resources.

These tax database services are developed for use primarily by experienced tax attorneys and may be overwhelming or frustrating to the novice user at first. Additional guidance is available by contacting the Law Library Reference Desk.

#### A. Thomson Reuters Checkpoint (formerly RIA)

**Thomson Reuters Checkpoint** (<http://search.library.duke.edu/search?id=DUKE003812967>) includes electronic equivalents of the looseleaf services *Federal Tax Coordinator 2d* (no longer updated in print) and *United States Tax Reporter* (available in print at KF6285 .U54). Checkpoint includes selected Warren Gorham & Lamont tax journals and treatises, and other analytical and news materials.

#### B. Bloomberg Law Tax Practice Center

The Tax Practice Center on **Bloomberg Law** combines comprehensive coverage of primary tax law materials in addition to practice tools covering federal, state, and international tax, as well as financial accounting resources. The ability to search federal court dockets is particularly helpful for conducting tax research on recent cases. Bureau of National Affairs (BNA) current awareness newsletters and Tax Management Portfolio publications are available here. Current members of the Duke Law community can subscribe to daily or weekly updates, or view them on the online platform.

#### C. Lexis Advance and Westlaw

**Lexis Advance** and **Westlaw** both have extensive tax libraries, although Lexis Advance is generally considered to be stronger in tax. (**Nexis Uni**, a campus-wide database which provides much of the same resources as the Law School's version of Lexis Advance, also includes access to basic primary tax sources, and several well-regarded specialized resources.) These systems include the Internal Revenue Code, regulations, cases, IRS rulings and pronouncements, and daily and weekly current awareness services, as well as journals and other secondary source material, and, of course, related case law material integrated into each. Westlaw includes the full text of treatises published by the Thomson West family (including the RIA services, and Warren Gorham & Lamont treatise titles). Lexis Advance provides the text of Wiley and Matthew Bender treatises; if you know the publisher of a particular book title, you can determine which service contains the searchable text.

## D. IRS Website

The **Internal Revenue Service** provides a great deal of current information, including forms, on its website (<http://www.irs.gov>). Although the browse capability works better than searching, the site offers search options for retrieving tax materials. The page listing “Basic Tools for Tax Professionals” (<http://www.irs.gov/Tax-Professionals/Basic-Tools-for-Tax-Professionals>) provides access to research materials, such as the code and regulations, the Internal Revenue Bulletin, and the Internal Revenue Manual.

## II. SECONDARY SOURCES

### A. Standard Treatises

The following selected titles are useful for topical overviews of tax issues generally, or in specific areas of taxation. Some of the works are very scholarly, some practical, and others provide more general overviews. These materials should be used as a starting point to understand the issues and to collect references for further research.

*WG&L Tax Dictionary* (Reference KF6287 .W47) is always helpful in a field with technical terms and jargon. Entries contain references to the Internal Revenue Code, IRS regulations, and case law.

Bittker & Lokken. *Federal Taxation of Income, Estates and Gifts*, 3d ed. 5 vols. (Tax Collection KF6335 .B57 & online in Westlaw). This treatise is the recommended starting point for all types of tax questions. Boris Bittker is also the co-author of several other treatises on more specific areas (see below).

*Federal Tax Coordinator (RIA)*, 2d ed. (online in Thomson Reuters Checkpoint, <http://search.library.duke.edu/search?id=DUKE003812967> & Westlaw). This comprehensive tax service, which is designed for the non-specialist but with detail and breadth of coverage, is organized by topic (rather than Internal Revenue Code section), and reads more like a treatise. This is a good resource if you do not know where to start, or if you suspect that more than one code section applies to your problem because it discusses the interrelationship of sections. Extensive tables are provided by code section, regulation, and case name. (The print equivalent of this title is no longer updated at the Library, although it is available in Superseded Tax KF6285 .F435. A similar service, *Standard Federal Tax Reporter*, is also no longer received in print at the library, although historical volumes are available in Superseded Tax KF6285 .C67 (1947-2005) and online in HeinOnline (1917-1985).)

*Federal Taxation (in American Jurisprudence 2d)*. For treatment of taxation by a legal encyclopedia, *American Jurisprudence 2d* (Reference KF154 .A42 & online in Westlaw, Lexis Advance, and Nexis Uni) includes multiple volumes on federal taxation. These sections are updated annually to reflect changes.

*2017 Tax Legislation: Tax Cuts and Jobs Act: Law, Explanation, and Analysis* (KF6276.62017 .T55 2017). An explanation and overview of the sweeping changes to federal tax law enacted by Congress in late 2017.

Other tax treatises can be browsed in the level 2 stacks. **Warren, Gorham & Lamont** is a well-known and respected publisher of tax treatises, including many of the titles listed below. A **keyword search** in the online catalog for “warren gorham lamont taxation” will retrieve WG&L books. Many are also available online in Westlaw, Lexis, or Thomson Reuters Checkpoint.

### Income Tax

- Bittker, McMahon & Zelenak. *Federal Income Taxation of Individuals*, 3d ed. (KF6369 .B572 & online in Westlaw).
- Burke & Friel. *Understanding Federal Income Taxation*, 5th ed. (Reserves KF6369.85 .B87 2016).
- Chirelstein & Zelenak, *Federal Income Taxation: A Law Student's Guide to the Leading Cases and Concepts*, 14th ed. (Reserves KF6369 .C54 2018; previous editions at KF6369 .C54).
- McNulty & Lathrope. *Federal Income Taxation of Individuals in a Nutshell*, 8th ed. (Reserves KF6369.3.M3 2012).
- Rosenberg & Daher. *The Law of Federal Income Taxation* (Hornbook) (Reserves KF6369 .R673 2008).

### **Estate and Gift Tax**

- Zaritsky & Lane. *Federal Income Taxation of Estates and Trusts*, 3d ed. (KF6584 .L36 2001 & online in Westlaw).
- Peschel & Spurgeon. *Federal Taxation of Trusts, Grantors & Beneficiaries*, 3d ed. (KF6581.5 .P48 1997 & online in Westlaw).
- Westfall & Mair. *Estate Planning Law and Taxation*, 4th ed. (KF6584 .W47 2001 & online in Westlaw).

### **Partnership, Corporate, and Securities Taxation**

- Eustice & Brantley. *Federal Income Taxation of Corporations and Shareholders*, 7th ed. (KF6464 .B57 2000 & online in Westlaw).
- Burke. *Federal Income Taxation of Partners and Partnerships in a Nutshell*, 5th ed. (Reserves KF6452 .Z9 B87 2017).
- Fried. *Taxation of Securities Transactions*, 1971-. (KF1366 .B7 v.11B & online in Lexis Advance).
- Kahn & Lehman. *Corporate Income Taxation* (Hornbook), 6th ed. (Reserves KF6464 .K28 2009).
- McKee, Nelson & Whitmire. *Federal Taxation of Partnerships and Partners*, 4th ed. (KF1375 .M32 & online in Westlaw).

### **State Tax**

- Hellerstein & Hellerstein. *State Taxation*, 3d. ed. vols. 1 and 2 (KF6730 .H44 1998 & online in Westlaw). Emphasis in this treatise is on federal constitutional restraints on state taxing, uniformity and equity requirements, as well as state income, franchise, and sales and use taxes.
- *North Carolina State Tax Reporter* (NC Area KFN7870 .A6 C65). This two-volume CCH looseleaf service covers North Carolina state tax law in detail.

### **International Tax**

- Doernberg, *International Taxation in a Nutshell*, 10th ed. (Reserves KF6419 .D64 2016).
- Isenbergh. *International Taxation: U. S. Taxation of Foreign Persons and Foreign Income*, 4 vols. (CCH) (KF6441 .I744).
- Postlewaite. *International Taxation: Corporate and Individual*, 10th ed. vols. 1 & 2, (KF6419 .P66 2016).
- The IRS also has a website listing international tax treaties by country: <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>.

## IRS Publications

Saltzman. *IRS Practice and Procedure*, rev. 2d ed. (Tax Collection KF6301 .S242 & online in Westlaw).

*IRS Publications* is a series of Internal Revenue Service documents on common tax issues, which provide explanations and associated forms. Topics range from basic tax questions such as “Selling Your Home,” to more complex areas of tax law such as “Passive Activity and At-Risk Rules.” IRS Publications are available on the Internal Revenue Service website (<http://www.irs.gov/formspubs/index.html>) and in the major tax databases.

## B. Current Awareness

These current awareness publications contain information on news items on tax issues, pending legislation in Congress, digests or full-text of all IRS pronouncements, and summaries or full text of opinions in current tax cases. They are necessary reading for practicing tax attorneys and researchers who need to stay current.

*Tax Notes* (online in Tax Analysts) is generally considered the major resource for tax news. Currently available online, past print editions of *Tax Notes* are available on Level 1 (Superseded Tax KF6284 .T37).

*Tax Management Weekly Report* (online in Bloomberg Law). This current awareness publication, available in the Bloomberg Law Tax Practice section, includes general tax news and specialized hot topics.

**Law360 Tax Authority** (online to Duke Law community in Lexis Advance and to Duke University community via Nexis Uni). This news service digests tax-related legal news and analysis from the Law360 service. Law360’s full Tax site is also available from networked Law School computers.

**Legislative News and Policy:** Information about emerging tax legislation and policymaking can be found on various congressional web sites, including the **House Committee on Ways & Means** (<http://waysandmeans.house.gov>), which has jurisdiction over revenue laws; and the **Joint Committee on Taxation** (<https://www.jct.gov/>).

**Statistics:** The IRS collects, analyzes and publishes a wide range of tax statistics at <http://www.irs.gov/statistics>. *Statistics of Income Bulletin*, or SOI Bulletin (available on the IRS website) is the publication most often used, and is released quarterly.

## C. Websites and Blogs

- **National Tax Association** (<http://www.ntanet.org/>): the national organization of tax professionals. Website includes link to publications.
- **Tax Foundation** (<http://www.taxfoundation.org/>): Most famous for originating “tax freedom day,” the foundation produces research, reports, newsletters and information to support their goal of educating taxpayers about sound tax policy. HeinOnline maintains a complete archive of Tax Foundation publications in its **Tax Foundation Archive** (<https://search.library.duke.edu/search?id=DUKE006163403>). More than 1200 titles are included, such as: Tax Watch, Facts & Figures on Government Finance, Library Bulletin, IRET Publications, and Civic Guides.
- **The Center on Budget and Policy Priorities** (<http://www.cbpp.org/>) represents contrary viewpoints on its site.

- **TaxProf Blog** (<http://taxprof.typepad.com/>) is maintained by Paul Caron, Dean at Pepperdine University School of Law.

#### D. Journals and Indexes

Articles on tax issues can be found in a wide range of law reviews, legal journals, and other non-law publications, using the standard journal indexes (e.g., LegalTrac) and full-text sources (e.g., HeinOnline). There are also many journals, both academic and commercial, devoted exclusively to taxation. Some frequently used materials include: *Journal of Taxation*, *Virginia Tax Review*, *Major Tax Planning* (an annual tax conference), *Taxes: the Tax Magazine*, *Tax Law Review*, and the *Annual Institute on Federal Taxation* (NYU). Selected Warren, Gorham & Lamont (WG&L) journals are online in **Thomson Reuters Checkpoint** (<http://search.library.duke.edu/search?id=DUKE003812967>).

There are several specialized indexes for tax articles. CCH's *Federal Tax Articles* (KF6285 .F4) looseleaf contains an index by Code section, along with the usual author and topic indexes. For older articles, the *Index to Federal Tax Articles*, published by Warren, Gorham & Lamont, indexed articles on federal income, estate, and gift taxation. The initial 1975 volume covers material back to 1913. The Law Library owns the supplements through 1990 (KF6282.7 .I53).

#### E. Form Books

Form books and checklists can provide valuable drafting resources for tax planning purposes, Form books may be arranged by topic or code section, and often include an analysis and citations to authorities. Forms are also online in the major tax databases, and a few official forms are posted on the IRS website. The library's research guide to **Legal Forms** (<https://law.duke.edu/lib/researchguides/legalforms/>) highlights a number of sources for print and online forms.

### III. SOURCES OF TAX AUTHORITY

#### A. Internal Revenue Code and Statutory Law

Title 26 of the *United States Code* contains most federal tax laws and is known as the *Internal Revenue Code* ("IRC" or the "Code"). However, statutes relevant to your research may be located outside the IRC when an agency other than the Treasury Department has primary responsibility for that area of law.

Knowing the relevant IRC sections is the best method for using specialized tax services, citators, and other resources. The Code is organized fairly logically, with all provisions on a particularly sub-topic usually found together, and with numerous cross-references to related sections. It is useful to scan the table of contents for a chapter to get an idea of the overall structure of a topic. Tax also includes hundreds of "**terms of art**": seemingly ordinary words, such as "expense" or "compensation," that have special legal meanings. Always look for definitions that apply in the section or sub-section. Also, IRC § 7701 contains over 50 definitions of commonly used terms.

Following the adoption of the 16th Amendment, the first Revenue Act was passed in 1913. (For an overview of this period in taxation law history, see Duke Law professor Lawrence Zelenak's *Figuring Out the Tax: Congress, Treasury, and the Design of the Early Modern Income Tax*, at KF6369 .Z45 2018.) There have been four major tax codifications passed since that time: the Internal Revenue Codes of 1939, 1954, and 1986, and the 2017 Tax Cuts and Jobs Act. Since 1954, the IRC structure and numbering has remained the same. These landmark dates help in tracing retrospective tax materials, and references to them are still common.

The current version of the IRC can be found in the standard *U.S. Code* publications (U.S.C., U.S.C.A., U.S.C.S.), and in specialized tax databases. Annual editions of the IRC are also published in print, and retained in the Law Library for historical research. Older volumes are in Superseded Tax (Level 1) with more recent years in the Tax Collection:

West (Tax Collection KF6276.526 .A19 I57)  
CCH (Tax Collection KF6276.537 .A19 C65).

The *Taxation & Economic Reform in America* library, provided through HeinOnline (<http://search.library.duke.edu/search?id=DUKE003131760>), includes IRS regulations and codes from 1863 to 1954, as well as extensive legislative history materials.

## 1. Tracing the History of Specific Code Sections

*Cumulative Changes in Internal Revenue Code of 1954 and Tax Regulations under the Code* (RIA) (Superseded Tax KF6277 1954) is a looseleaf service that summarizes changes since 1954 and provides the derivation of Code sections. It also provides the full text of previous versions of code and regulation sections. Citations for legislative history research can be found here as well.

*Barton's Federal Tax Laws Correlated* (KF6335 .A3 1968 & in HeinOnline) traces income, estate, and gift tax provisions from the Revenue Act of 1913 through 1968. Originally in several editions, this reprinted edition includes information presented and collected in various ways, sometimes including case annotations, citations to legislative history, effective dates, and cross-reference tables, depending on the time period covered.

## 2. Legislative History

Several print sources in the Law Library track legislative history information for retrospective tax legislation. The most comprehensive selection of legislative history materials, however, can be found in HeinOnline's *Taxation & Economic Reform in America* library (<https://search.library.duke.edu/search?id=DUKE004320884>). Most, if not all, of the print titles identified below are online in this searchable collection.

*Legislative History of the Internal Revenue Code of 1954....* (KF6335 .U58I 1967 & in HeinOnline). Covers 1954-1965 with references back to the derivation of sections in the 1939 Code.

*Internal Revenue Acts of the United States, 1909-1950: Legislative Histories, Laws and Administrative Documents* (in HeinOnline). Carlton Fox was a Justice Department lawyer who compiled this collection of 146 print volumes. Search by document type, bill number, volume number, date of publication, popular name, and more.

*Seidman's Legislative History of Federal Income Tax Laws 1938-1861* (KF6355.8 S44 1938 & in HeinOnline). Note that the chronology in this and the following volume go from newest resource to oldest.

*Seidman's Legislative History of Federal Income and Excess Profits Tax Laws, 1953-1939* (KF6355.8 .S44 1954 & in HeinOnline). *Seidman's* is not comprehensive; the author omitted items he considered to have little interpretative significance. There is, however, great detail and depth for what is included and many excerpts.

In addition to the usual sources for more recent legislative history, documents for tax legislation are in several other trusted and popular sources:

The *Internal Revenue Bulletin* (online in HeinOnline (PDF)) reprinted the public laws from *Statutes at Large* along with congressional reports from the legislative history of major revenue acts since 1919 (with the exception of 1954 Code). The biannual *Cumulative Bulletin* compilations ceased with the 2008 volume, but weekly *Internal Revenue Bulletins* (online in HeinOnline (PDF), Westlaw, and Lexis Advance) continue to reprint legislation and related reports. *Internal Revenue Bulletins* are also available on the IRS website, <http://apps.irs.gov/app/picklist/list/internalRevenueBulletins.html>.

“**Bluebooks**” prepared by the staff of the Joint Committee on Taxation are detailed explanations of tax legislation. Although not part of the legislative history per se, Bluebooks are most helpful for explaining and tracing the path of the legislation through Congress and giving the researcher an overview of adopted legislation. Some Bluebooks are owned in print by the Duke Libraries and can be found in the online catalog using the **keywords** “general explanation” and “joint committee on taxation.” They are also included on the Joint Committee web site, with content from 1969-present (<http://www.jct.gov/>).

## B. Administrative Law

The Department of the Treasury is the executive department responsible for implementing tax laws. The Internal Revenue Service (IRS), a bureau within the Treasury, performs that function, issuing numerous types of documents for both interpreting the Code and enforcing the law. These documents range from regulations to letters commenting on specific transactions. Note that there are special *Bluebook* rules for citing materials published by the Department of the Treasury (see *Bluebook* Table 1.2).

### 1. Regulations

Regulations are the highest administrative authority issued by the Treasury Department and are commonly referred to and cited as **Treasury Regulations**, and once finalized, as Treasury Decisions or T.D.’s. Regulations are codified in Title 26 of the *Code of Federal Regulations*, and are found individually in many other places. *Bluebook* citation does not require reference to the CFR as with other regulations, but notes these as Treas. Reg.

Annual print editions of tax regulations are published each year in *Income Tax Regulations* (CCH) (current edition at KF6356.99), which includes regulations in force as of July 14 of each year.

Treasury regulations, unlike most regulations, have a specific numbering scheme consisting of three parts: a prefix before the decimal indicating the type of tax (e.g. 1 for income, 20 estate & gift, 30 employment, and 40 excise taxes); numbers following the decimal corresponding to the IRC section; numbers after the dash are the numbering scheme for the regulations. Thus, Treas. Reg. § 1.167(a)-1 is the first regulation on the income tax code section 167(a).

There are two general types of regulations: (1) **legislative regulations**, when the legislation has specific language granting the IRS authority, are authoritative and extremely difficult to challenge; and (2) **interpretive regulations**, which can be attacked by showing that the regulation is contrary to the IRC and was issued under general authority of the Treasury to make rules and regulations. Generally the distinction depends upon the breadth of authority which Congress gave the IRS for rule-making in a particular area.



The process for adopting regulations generally follows administrative law ‘notice and comment’ practice as required under the Administrative Procedure Act. Three stages are used for tax; all three kinds of regulations are officially published in the *Federal Register*:

i. **Proposed Regulations** are issued as a “Notice of Proposed Rule Making.” The IRS may also publish an Advance Notice of Proposed Rulemaking to get input even before a proposed regulation is drafted. Note the “Regulation Identification Number (RIF)” and Project Number for help in tracing future actions.

ii. **Temporary Regulations** are effective immediately. They are often issued after new IRC sections become law to guide taxpayers more quickly, before the IRS goes through the comment and revision process. A temporary regulation can remain in effect for up to 3 years. Temporary regulations are usually issued simultaneously as Proposed Regulations.

iii. **Final Regulations** are accompanied by a preamble containing analysis and a summary of comments and changes that provide important background and history for interpretation. After the mandatory comment period, the final regulation, almost always an amended version of the proposed regulation, is adopted as a Treasury Decision (T.D.). The T.D. number is used for access in finding lists and citators, rather than the CFR citation.

The tax databases and looseleaf services note proposed and temporary changes along with current regulations, making it easy to keep up to date.

Most important, when there is a change in the Code, the prior regulations for that section may become obsolete and inconsistent with the current Code provisions. The process to write and adopt revised regulations takes a considerable amount of time. The tax databases do a very good job of alerting the researcher to these inconsistencies with “Caution” notations. If you identify a regulation in some other source, check that it is consistent with the current code provision before relying on it.

## 2. Administrative Publications

*Internal Revenue Bulletin (IRB)* (in HeinOnline, Westlaw and Lexis Advance, and free on the IRS website), published weekly, is used by tax researchers and practitioners to monitor regulations and other Treasury pronouncements. The *IRB* includes Revenue Rulings, Revenue Procedures, Treasury Decisions, IRS notices and News Releases, and acquiescence or non-acquiescence in court decisions (AODs). All stages of activity for regulations are also tracked in the *Federal Register*. From 1954 to 2008, the *IRB* was also cumulated into the *Cumulative Bulletin (CB)* (Doc. T22.25) twice a year.

As evidence of their significance, the IRS also provides advance notice of some administrative materials, even before publication in the *IRB* and the *Federal Register*. See **Advance Notice for Tax Professionals** (<http://www.irs.gov/Tax-Professionals/Advance-Notice-for-Tax-Professionals>). Many administrative publications are linked in the IRS **Electronic Reading Room** (<https://www.irs.gov/uac/electronic-reading-room>).

The *IRB* is included in the tax databases, on the IRS website (<http://www.irs.gov/irb/>), and reprinted as part of the RIA *Federal Tax Coordinator 2d* loose-leaf (online in Thomson Reuters Checkpoint). Administrative documents and pronouncements included in the *IRB* can also be retrieved as individual documents in the tax databases; Lexis Advance and Westlaw also provide access.

Following are descriptions of the most important IRS documents and where to locate them. Although not as authoritative as regulations, these materials provide important additional guidance on what taxpayers can expect the IRS to do.

**a. Revenue Rulings** are pronouncements about particular factual situations which taxpayers have presented to the IRS, and which the Service determines to be of general interest. They provide analysis of a transaction and relevant Code provisions. Although they do not have the weight of regulations, they can be relied upon by a taxpayer in a similar situation. The IRS is bound by a Revenue Ruling unless it is officially revoked. Status of Revenue Rulings can be determined by using one of the citators (see section IV, below) or by checking the "Finding List of Current Action on Previously Published Rulings" in the *IRB*.

Before 1953, rulings were titled I.T. (income tax) or E.T. (employment tax) rulings or various other names such as O.D. (office decisions). Since 1953 they have been called Revenue Rulings and numbered chronologically preceded by the year of issuance.

Revenue Rulings are published in full in *Tax Notes* (online in Tax Analysts & historical print editions at Superseded Tax KF6284 .T37) and can also be found in the tax research databases.

**b. Revenue Procedures** are IRS pronouncements that address internal practice and procedure, such as describing how to request a ruling, listing requirements of how to qualify as a Subchapter S corporation, or what depreciation methods are acceptable.

**c. Letter Rulings** Like Revenue Rulings, Letter Rulings (LTRs) or Private Letter Rulings (PLRs) are IRS responses to questions from individual taxpayers about proposed transactions. However, they are not considered of general interest, and are not officially published; their application is technically limited to the taxpayer making the request and without precedential authority. They became available in 1976 under the Freedom of Information Act, and are used frequently by tax practitioners as indicators of how the IRS will view a transaction and of IRS policy.

**d. Technical Advice Memoranda (TAMs)** are another type of private ruling and are issued in the same numerical series as PLRs. They are written by the IRS national office in response to a question from a taxpayer or from a field officer auditing a return. Therefore, they are considering completed rather than proposed transactions. More carefully reviewed than Private Letter Rulings, they also technically have no precedential authority. Field Service Advice (FSA) are similar documents. Determination Letters are responses by local IRS district offices on completed transactions. The full text of PLRs and TAMs are available from 1954 to the present in the tax database services. PLRs and TAMs are digested in *Tax Notes* (online in Tax Analysts & historical print editions at Superseded Tax KF6284 .T37).

**e. Notices and Announcements** from the Public Affairs Division of the IRS provide a range of information for general distribution. Examples are to summarize a new law, or to give notice of procedural changes. Notices and Announcements are included in the *IRB* and as separate databases on the tax research services.

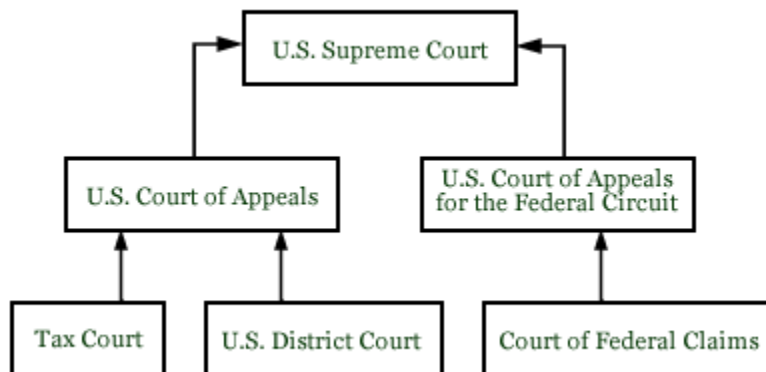
**f. Chief Counsel Advice** (formerly **General Counsel Memoranda**) are prepared by the IRS office of Chief Counsel as internal guidance to explain the reasoning behind Revenue Rulings, Private Letter Rulings, and Technical Advice Memoranda. GCMs were issued until 2002 and are numbered sequentially, but without any indication of their year of issue. They can be found in *Tax Notes* (online in Tax Analysts & historical print editions at Superseded Tax KF6284 .T37) and are

available in separate IRS General Counsel Memoranda and Chief Counsel Advisories databases on the tax databases.

**g. Internal Revenue Manual (IRM)** is a compilation of operating policies and practices of the IRS. The *Manual* is divided into parts based on IRS department organization (e.g., Taxpayer Service, Audit, and Market Segment Specialization Program). It includes policies, procedures, instructions, and guidelines related to the function and administration of the IRS. The IRS publishes the *Manual* on its website; current and historical editions can also be found on the tax databases. Changes are published in **Tax Notes** (online in Tax Analysts & historical print editions at Superseded Tax KF6284 .T37).

### C. Judicial Authority

Income tax litigation begins in one of three forums (see chart). If the taxpayer has not paid the tax, the forum is the United States Tax Court. In this forum, there is no right to a jury trial, but the judges have more tax expertise and sophistication due to the specialized nature of the court. If the taxpayer has paid the disputed tax and is then refused a refund, the forum is either the federal district court (where the taxpayer is entitled to a jury trial) or the Court of Federal Claims.



Appeals from Tax Court and federal district court decisions are to the Circuit Court of Appeals covering the taxpayer's state of residence. Appeals from the Court of Federal Claims are to the United States Court of Appeals for the Federal Circuit (created Oct. 1, 1982).

Locating relevant decisions usually begins in the database services with annotation summaries that follow the code section and regulations in an arrangement similar to that of an annotated code. Annotations in the tax databases include summaries of both cases and IRS pronouncements relevant to the section.

Opinions from the federal courts and the Tax Court are available in official publications as well as commercial publications. The similarity in abbreviations for all these reporters, as well as the changes in publisher names and titles of the reporters, can cause some confusion. Table 1.1 of the *Bluebook* includes a short list for the Tax Court publications.

#### 1. Tax Court Opinions

There are two kinds of decisions from the Tax Court, which are somewhat parallel to published vs. unpublished decisions from other courts.

**Tax Court Regular Opinions** are opinions designated by the Chief Judge of the Tax Court as containing novel or important issues, and can be thought of as “published” (precedential) opinions. The Chief Judge also decides whether these opinions will be reviewed by all the judges, or will stand as written by the judge who heard the case. They are published officially in the *United States Tax Court Reports* (TC) (some volumes entitled *Tax Court of the United States Reports*) (Doc. Ju11.7/A2: & in HeinOnline U.S. Federal Agency Documents, Decisions and Appeals Library). Before 1942, when the Tax Court was called the Board of Tax Appeals, the official reporter was the *Board of Tax Appeal Reports*.

**Tax Court Memo Decisions** are the opinions not designated as “Regular.” For some time, they were not published “officially” and were considered unpublished opinions. The precedential value of TC Memo Decisions has shifted, much the same as other “unpublished” federal court opinions. Since 2001, the Tax Court has also issued Summary Opinions that are designated as without precedential value. Orders issued by the Court are available on the court website from 2011 to date.

All decisions from the Tax Court are available since September 1995 with daily update on the Tax Court website at <http://www.ustaxcourt.gov>. The content of TC and Memorandum Opinions published after September 1995 and Summary Opinions published after January 2001 can be searched by keywords and phrases.

Both Tax Court Regular and Tax Court Memo Decisions are also available in **Thomson Reuters Checkpoint** (<http://search.library.duke.edu/search?id=DUKE003812967>), **Nexis Uni**, **Westlaw**, **Lexis Advance**, and **Bloomberg Law**. The Law Library’s off-site storage facility also contains the unofficial print sources *CCH Tax Court Reporter* (Library Service Center KF6280.A2 .C729) to 2011, *Tax Court Reported & Memorandum Decisions* (RIA) (Library Service Center KF6281 .T39) to 2008, and *Tax Court Memorandum Decisions* (Library Service Center KF6280.A2 C73).

**Tip:** Citations to these unofficial reporters use paragraph numbers for reference to new material and then by the volume and page number for the bound volumes.

## 2. Federal District and Appellate Courts

There is no official reporter for opinions from the lower federal courts. Tax opinions are published along with other federal district court opinions, in West’s *Federal Supplement* (1932- ) and *Federal Reporter* (before 1932). Both sets are available in the Federal Reporters & Digests section of the Law Library and online in PDF in Westlaw; text versions of the opinions are available in Lexis Advance, Bloomberg Law, and other online sources for court opinions, such as Nexis Uni and Fastcase.

Tax opinions from the U.S. Circuit Courts of Appeals and Court of Appeals for the Federal Circuit are published in the *Federal Reporter* series. West’s *Federal Claims Reporter* (formerly *United States Claims Court Reporter*) includes opinions from the Court of Appeals for the Federal Circuit and the Supreme Court.

## 3. Court of Federal Claims

The Court of Federal Claims hears a larger percentage of tax cases than other federal district courts. Between Oct. 1, 1982, and Oct. 29, 1992, this court was called the United States Claims Court. Before that, it was known as the United States Court of Claims and only the Supreme Court had jurisdiction over appeals from its decisions.

Court of Federal Claims decisions are published in the *U.S. Court of Claims Reports* (Doc. Ju 3.9), West’s *United States Claims Court Reporter* (1982-1991), and West’s *Federal Claims Reporter* (1992-). In

addition to being published on the online research services, opinions are also available free on the Court's website (<http://www.uscfc.uscourts.gov/aggregator/sources/8>) from 1997 - present and can be searched by keyword and date.

#### 4. Acquiescence Decisions & Actions on Decisions

Only decisions by the U.S. Supreme Court are binding authority on the IRS. For decisions from other courts in which the IRS does not prevail, the Commissioner must decide whether to abandon its position in the litigation (**acquiescence**) or to continue to pursue the IRS's position in subsequent litigation contrary to the court decision (**non-acquiescence**). This stance is obviously very important information, and is unlike deciding whether a case is "good law" for non-tax topics. The tax citators (see Section V below) include information on these decisions. The decision on acquiescence is usually made quickly; however, **if there is no decision, this is not the same as acquiescence**. Acquiescence or non-acquiescence has the same legal effect as a Revenue Ruling.

**Actions on Decisions** (AODs) are internal IRS communications that are occasionally written to summarize a court decision which is adverse to the IRS position, and to recommend IRS acquiescence or non-acquiescence. AODs are not written for all decisions. They are intended to provide guidance to IRS staff who are working on similar issues, until an official acquiescence or non-acquiescence is decided. If the decision is by a court other than the Tax Court, the Actions on Decisions indicate whether the IRS will appeal the court's decision. This background information can help the researcher assess future IRS policy.

AODs can be found in *Tax Notes* (online in Tax Analysts) and the major tax databases. The *Internal Revenue Bulletin* lists the Commissioner's decision whether to acquiesce as soon as it becomes available, as a Notice.

### IV. CITATORS

Both *Shepard's* (Lexis Advance) and *KeyCite* (Westlaw) can be used to update citations for tax materials. However, specialized tax citators do a better job of tracking all of the IRS administrative pronouncements and covering the specialized citation formats. Citators provide parallel citations, subsequent history, and citations to later cases plus IRS interpretations, such as Revenue Rulings and IRS pronouncements, which cite the case you are researching.

*Citator 2nd* (RIA) (online in Thomson Reuters Checkpoint and KF6285 .U55 2nd)

Commentators seem to agree that the RIA citator is the most useful and complete. Citations include citing authority from 1954 forward and editorial treatment; the Constitution, statutes, and treaties are not included. Although RIA covers regulations and IRS documents, it lists cited regulations in T.D. (rather than section number) order. Case name or citation can be used.

### V. TAX RESEARCH GUIDES

Mary A. Hotchkiss, Federal Income Taxation, in *Specialized Legal Research*, 2d ed. ch. 3 (Penny Hazelton, ed., 2014-) (Ref. Desk KF240 .S642).

Joni Larson & Dan Sheaffer. *Federal Tax Research*, 2d ed. (KF241. T38 L37 2011).

Peter A. Lowy, Tax Management Portfolio, *Legal Authorities in U.S. Federal Tax Matters — Research and Interpretation*, No. 100-3rd (online in Bloomberg Law). This BNA Tax Management Portfolio, written for practicing attorneys, discusses the basics of federal tax research.

Gail Levin Richmond. *Federal Tax Research: Guide to Materials and Techniques*, 9th ed. (KF241 .T38 R5 2014). Richmond has also written an extensive chapter on tax research in Barkan, Bintliff & Whisner, *Fundamentals of Legal Research*, 10th ed. (Reserves KF240 .J3 2015).

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